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SUBJECT: IN VICTORY FOR WOMEN'S RIGHTS, COURT UPHOLDS
RESTRICTIONS ON POLYGAMY

REF: JAKARTA 13442

¶1. (C) SUMMARY: Indonesia's Constitutional Court recently upheld the right of a spouse to deny a husband's demand to take on additional wives. The court's ruling upheld a 1974 marriage law that allows polygamy, but restricts its practice. Efforts to tighten the restrictions further have so far gained little legislative traction, however. The Court ruling was a victory for women's rights and a setback for conservative Islamic groups--but the culture wars are bound to continue. END SUMMARY.

POLYGAMY CONTAINED

¶2. (U) On October 3, the Constitutional Court rejected a petition to review the 1974 marriage law. The case was brought by a Jakarta businessman, Muhammad Insa, whose attempts to take a second wife were repeatedly denied by local courts. The Court ruled that restrictions on polygamy violated neither the Indonesian Constitution, nor tenets of Islam, and were--in fact--necessary to protect the rights of women.

¶3. (U) The 1974 law allows a man wishing to take more than one wife to seek permission from a local court provided his first wife cannot carry out her wifely "duties," is handicapped, terminally ill, or "barren." Additionally, a man must obtain his first wife's/wives' consent and prove that he can support all of his wives and children. A 1983 law further restricts the practice for civil servants by requiring men wishing to take an additional wife, and women wanting to become an extra wife, to obtain permission from their supervising officer.

¶4. (U) Insa argued that the restrictions deprived him of his basic right under Islam to have up to four wives. He also argued that the restrictions resulted in several unintended societal consequences. The Court--in its decision--ruled that polygamy is not a human right protected by the Constitution. Instead, it described the restrictions as a necessary protection for women's rights. It also found insufficient evidence to support a link between the restrictions of polygamy and the incidence of divorce, prostitution and adultery.

MIXED EMOTIONS

15. (C) The ruling provoked various reactions. It was strongly supported by a variety of moderate groups and NGOs promoting women's rights. In general, however, mainstream Islamic organizations are divided on the subject. Neither Nahdlatul Ulama (NU) or Muhammadiyah, Indonesia's largest mass Muslim organizations, have taken a position, for example. Both organizations see polygamy as a religious issue as opposed to a political one and neither has prohibited their followers from entering into polygamous relationships. Several fringe Islamic groups vehemently complained about the decision. One conservative member of the national legislature (DPR) told Pol/C that he thought the ruling was "anti-Islam."

TIGHTENING RESTRICTIONS?

16. (SBU) Indonesia's recent debate on polygamy was sparked in part by the December 2006 admission of popular Muslim televangelist Abdullah Gymnastiar (generally known as AA Gym) that he had secretly taken a second wife (see reftel). The announcement dismayed Gym's followers, many of whom were women, and severely impacted his stature. Gym, who in previous years appeared on television nearly every day of Ramadan, has disappeared from programming. Despite the backlash, polygamy enjoys support among many conservative, mostly male Muslims. Actual rates of polygamous marriage are low, but approximately 40 percent of the population supports the practice, according to the Lembaga Survei Indonesia, a reputable local polling firm. The actual rate of polygamous marriage is probably quite low, although no reliable data exists.

17. (C) In the wake of the Gym scandal, President Yudhoyono

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mulled extending the 1983 law to capture all Indonesian government employees by including ministers and the military, for example. His efforts were supported by the Ministry of Women's Empowerment, which has identified as many as 29 laws that discriminate against women. Nevertheless, efforts to expand restrictions on polygamy have failed to garner broad support. According to contacts at the Asia Foundation, polygamy is still a source of debate within the administration. Many in government and the legislature consider the current laws adequate. The DPR has yet to consider any amendments to the 1974 or 1983 laws.

ONGOING CULTURE WAR

18. (C) The Constitutional Court decision was significant for women's rights because a ruling in Insa's favor would have diminished the rights of wives and their bargaining power in relationships. During the Suharto period, polygamy was legal but frowned upon by authorities. Suharto's influential wife, Tien, was a major force against polygamy, for example. With the advent of democracy, polygamy is practiced more openly, but a stigmatism still exists. That said, Islamic groups which were largely muzzled during the Suharto period, regularly speak up in favor of the practice by claiming that it is all a matter of personal choice. Public acceptance remains a hotly contested issue of debate and the culture wars involving those who tend toward a secular approach versus a religious one are bound to continue.

HUME